



ORRICK, HERRINGTON & SUTCLIFFE LLP  
666 FIFTH AVENUE  
NEW YORK, NY 10103-0001  
tel 212-506-5000  
fax 212-506-5151  
WWW.ORRICK.COM

MEMO ENDORSED

June 29, 2007

Lisa T. Simpson  
(212) 506-3767  
lsimpson@orrick.com

BY FACSIMILE

The Honorable Frank Maas  
United States Magistrate Judge  
United States District Court  
Southern District of New York  
Daniel Patrick Moynihan United States Courthouse  
500 Pearl St., Room 740  
New York, NY 10007

The Court will hold a conference  
on 7/18/07 at 5pm in Courtroom  
20A. At least three business  
days before the conference  
counsel shall meet and discuss  
(face-to-face)

Re: Great White Bear, LLC v. Mervyns, LLC (06 CV 13358)

Dear Magistrate Judge Maas:

We represent Defendant Mervyn's LLC ("Mervyn's") in the above-referenced matter. We received today the order from the Honorable Richard M. Berman referring this matter to Your Honor for all pretrial matters, including discovery. We submit this letter in response to Plaintiff's letter to Judge Berman, dated June 27, 2007, concerning Mervyn's document production ("Plaintiff's June 27 Letter"). Contrary to Mr. Byler's suggestion, Mervyn's has produced all documents in its possession, custody or control responsive to Plaintiff Great White Bear, LLC's ("GWB") requests, including any documents in its possession responsive to those requests that concern Scott Jeffries. No documents have been withheld on any grounds. Mr. Byler was informed of this fact by letter dated June 26, 2007 which is attached as Exhibit D to Plaintiff's June 27 Letter.

availability  
of back-up  
tapes,  
etc.

7/1/07  
USMJ,  
6/29/07

Mr. Byler's suggestion that Mervyn's has not produced any documents from the "critical time period" is also untrue. In fact, Mervyn's has produced over 2500 pages relevant to this dispute, including the contract that governed GWB's and Mervyn's relationship. In order to locate and produce those documents, Mervyn's conducted an extensive and thorough search of all files in its possession, both electronic and hard copy, that could possibly have contained responsive documents. In making his unfounded allegations, Mr. Byler seems to ignore the fact that this litigation was filed over a year and a half after what Mr. Byler refers to as the "critical period," which is a very long time in the retail industry where e-mail particularly is swept and replaced on a very short time schedule pursuant to standard business procedure. In fact, his client, GWB, has produced essentially the same amount of e-mail that Mervyn's has produced in this matter, and notably, has not produced certain e-mails between the parties that Mervyn's has produced.



ORRICK

The Honorable Frank Maas

June 29, 2007

Page 2

While we are unclear exactly what relief Mr. Byler is seeking, any suggestion that Mervyn's document production is somehow incomplete or that sanctions are warranted on these facts is entirely without merit.

Respectfully submitted,



Lisa T. Simpson

cc: Philip A. Byler, Esq. (By Facsimile)  
Counsel for Great White Bear, LLC